(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

MISCELLANEOUS CIVIL APPLICATION NO. 31 OF 2004
IN APPEAL FROM ORDER NO. 48 OF 1999

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri M. S. Usgaokar, Senior Advocate with Shri Sudin Usgaokar, advocate for the applicants.

Shri S. K. Kakodkar, Senior Advocate with Shri J. J. D'Souza, Advocate for respondent no.1.

Ms. R. Chodankar, advocate for respondent nos. 2(a) to 2(f).

CORAM : SMT. NISHITA MHATRE, J.

DATE : 26th February, 2004

P.C.:

The application filed is for bringing the heirs of the deceased original appellant on record. The original appellant expired on 10th November, 2003. This application has been filed on 20th December, 2003, and, therefore, has been filed within the stipulated period.

2. On behalf of th respondents the application is opposed, as according to the respondent the right to sue does not

survive with the legal representatives. It is urged on behalf of the respondents that the original plaintiff had sought dissolution of the partnership firm, M/s. Raikar Jewellers and certain other consequential reliefs. According to the respondents, unless prayer (a) of the plaint is granted, consequential reliefs cannot be granted by any court. The plaintiff having expired, the right to sue does not survive.

3. The relief claimed in the suit is for a declaration that the said firm stands dissolved with effect from the receipt of summons in the suit, or from the any date that the Court would deem just and proper. During the pendency of the present appeal the plaintiff had expired. Accordingly, although the declaration sought may not be granted from the date of receipt of the summons, in any case such a declaration that the firm stands

dissolved with the death of the partner, i.e. the original plaintiff, can always be granted. As a consequence thereof the other prayers in the plaint can also be considered and granted by the trial Court after assessing the merits of the case. In view of this, the application for bringing the heirs on record is allowed. Amendment to be carried out within a period of two weeks from today. Civil Application disposed of accordingly.

SMT. NISHITA MHATRE, J.

mc.